THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9111 of 1998

Dated:4.4.2007

Between
Mohammed Abdul Mannan

.....Petitioner

and

1.II Appellate Authority
under Section 48 (3) of
APS & E Act &
Deputy Commissioner of
Labour,Hyderabad and another.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.9111 of 1998

ORDER:

This writ petition is filed seeking a Certiorari to call for the records in S.A.No.4 of 1997 dated 1-11-1997 on the file of the Second Appellate Authority under Section 48 (3) of Andhra Pradesh Shops and Establishment Act, 1988 & Deputy Commissioner of Labour, Hyderabad and to quash the same as arbitrary and illegal.

It appears that while the petitioner was working in the 2nd respondent-Company, he applied for leave from 14.6.1995 to 29.6.1995 for his marriage, but the same was not granted. However, the petitioner availed the leave and reported to duty on 30.06.1995. Further, on 14.07.1995 he was asked to report

to the Head Office at Bombay. On 15.7.1995, at the Head Office, Bombay, he was asked to resign from service by the 2nd respondent-Company. However, he did not tender any resignation, and came to Hyderabad and continued to report for duty. Thereafter, a letter dated 31.8.1995 was addressed to him by the 2nd respondent-Company alleging that he returned back to Hyderabad without waiting for posting orders and he was asked to report at Bombay Office with effect from 7.9.1995 as Branch Manager. When he had reported at the Head Office at Bombay on 15.7.1995, no letter of posting as Branch Manager was issued to him nor he was paid salary from June 1995 onwards and the letter dated 31.8.1995 is only an after thought. Therefore, he filed an application before the authorities claiming salary from June 1995 to January 1996 which was numbered as SE No.1 of 1996. As soon as notice has been received in the above said case, the 2nd respondent-

Company has issued an order dated 31.1.1996 terminating the services of the petitioner. Aggrieved by the same, the petitioner filed SE No.3 of 1996 under Section 48 (1) of the Andhra Pradesh Shops and Establishment Act (for short 'the Act') before the Primary authority. The authority, however, dismissed the said application on 01.3.1997. Aggrieved by the same, the petitioner filed S.A.No.4 of 1997 before the Second Appellate Authority. The Second Appellate Authority though held that the termination was bad in law, granted compensation in lieu of reinstatement since the relation between the parties is strained and they suspected each other. Aggrieved by the same, the present writ petition is filed.

No counter is filed by the respondents.

Learned counsel for the petitioner strenuously contended that the Second Appellate Authority having found that the termination of the petitioner with effect from 31.1.1996 was arbitrary and illegal, ought to

have directed reinstatement of the petitioner into service with continuity of service, and with all attendant benefits and back wages. Instead of doing so, under misconception, it granted a compensation of Rs.75,000/- in lieu of reinstatement without continuity of service. According to the learned counsel for the petitioner, even assuming that the petitioner is entitled for compensation, fixing of compensation at Rs.75,000/- is too low in the facts and circumstances of the case.

Learned counsel for the second respondent supported the impugned order passed by the Second Appellate Authority and further stated that aggrieved by the said order, the 2nd respondent-Company had already filed WP No.31942 of 1997 and the same is pending, as such, no interference is called for by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the

learned counsel on either side and perused the impugned order and other material made available on record.

At the out set, I am in complete agreement with the findings arrived at by the Second Appellate Authority which reads as under:

> "The appellant signed upto 9.6.95, 12,13 are blank and 14 to 30th June, 1995 are shown as absent but mentioned 13 SPL and for the month of July 1995 indicates all absents, for the month of August, 1995 1.8.1995 indicates clear absent and 2.8.95 to 16.8.95 were marked as Absent, but the applicant has over initialed on 'A' and 17.8.1995 onwards (upto Dec' 1995) the appellant was marked as absent indicating 'A'. But no where mentioned or written or endorsed that the appellant was transferred to the Bombay Branch on promotion or otherwise indicating the date with effect from etc, in spite of representation received from the appellant dated 7.6.95 (Ex.A8,A9, A10 & A11) shows that there was no bona fide transfer on records procedurally or in order and the pay adopted by the respondent-2 is improper.
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> The Ex.A13, dt.31.1.996, Ex.R1 (Sep.9.95) termination of contract of service wef 1.2.1996 indicates that the appellant entitled to wages upto 31.1.1996 and all the documentary evidence which were filed by the parties clearly indicates that Section 47 of Shops and Establishments Act is not being followed by the

respondent-2 before he terminates the services of the appellant and the respondent-1 has not taken all the abstracts of the evidence before passing the order.

Therefore, I set aside the orders of the lower authority and Assistant Commissioner of Labour-II passed in SE.3/96 on 17.3.1997. However, I award the compensation instead of reinstatement into service though it is fit case for reinstatement into service with back wages. But in view of strain relation and suspect of faith in each other, I order the respondent-2 to pay compensation of Rs.75,000/- within 15 days from the date of receipt of order."

From the above, it is to be seen that the termination of the services of the petitioner was arbitrary and illegal, but in view of the strained relation between the parties, the Second Appellate Authority thought it fit to award a compensation of Rs.75,000/- in lieu of reinstatement. I am of the opinion that the compensation awarded by the Second Appellate Authority is liable to be modified and enhanced from Rs.75,000/- to Rs.1,00,000/-.

The contention of the learned counsel for the petitioner that there was no strained relation or loss of faith in each other does not arise as absolutely there was no evidence in

that regard.

It is a fact that the petitioner was refused to grant leave from 14.6.1995 to 29.6.1995 for his marriage and when he reported for duty on 30.6.1995, he was asked to report at Head Office at Bombay. Thereafter, he waited for 15 days, but as he was not given any posting orders, he had come back and reported to duty at Hyderabad, which would goes to show that there was something more, than what can be seen by the nacked eyes. Therefore, the Second Appellate Authority has rightly observed that in view of the strained relations between the parties and loss of faith in each other, awarding of compensation would be just and proper.

For all the above reasons, the impugned order passed by the Second Appellate Authority is modified and the compensation is enhanced from Rs.75,000/- to Rs.1,00,000/-.

With the above modification, the writ petition is disposed of. No costs.

4-4-2007

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